

APPEAL NO. 010526

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 13, 2001. The two issues in the case were:

1. Does the compensable injury extend to and include the Claimant's [respondent/cross-appellant] psychological conditions diagnosed as hallucinations, paranoia, and psychosis NOS?
2. Did the Claimant have disability as a result of his compensable injury, and if so, for what periods?

The hearing officer determined that the claimant's psychosis was a result of treatment for his compensable injury and that disability started on September 28, 2000, and ended on October 10, 2000. The appellant/cross-respondent (carrier) has appealed this decision and also appeals a ruling which denied admission of Carrier's Exhibit No. 7b. The carrier also asserted that the hearing officer considered an Claimant's Exhibit No. 7 which was not admitted during the hearing. The claimant filed a response to the carrier's appeal, requesting that the hearing officer's determination of compensability be upheld but appealing the period of disability. The claimant asserts that the correct period of disability is from September 28, 2000, to January 31, 2001.

DECISION

Affirmed.

The hearing officer correctly ruled that Carrier's Exhibit No. 7b would not be admitted because it had not been exchanged in a timely manner. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §142.13(c) (Rule 142.13(c)). Regarding Claimant's Exhibit No. 7, the hearing officer ruled that it would not be admitted (transcript, page 8). Although Claimant's Exhibit No. 7 is on the list of exhibits "admitted unless otherwise noted" and there is no such notation, we may presume that the hearing officer followed through on his ruling and did not consider the exhibit.

The hearing officer's decision, to the effect that the claimant's compensable back injury extends to include certain psychological conditions, is supported by the evidence. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact

may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer. There was medical evidence from which the hearing officer could determine that the claimant's psychosis resulted from the medications he was taking for his compensable back injury. As such, the hearing officer could conclude that the psychosis was also part of the compensable injury.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. There was evidence from which the hearing officer could conclude that the period of disability extended from September 28, 2000, to October 10, 2000. The claimant testified that he worked from the time he injured his back on _____, until September 28, 2000, when he was hospitalized for the first psychotic episode and that he had not continued to have any psychotic episodes since getting out of the hospital on October 10, 2000. There was an "Offer of Light Duty" made and accepted on September 19, 2000 (Carrier's Exhibit No. 6), and there is a notation in Carrier's Exhibit No. 4, at page 6, which reads as follows:

Claimant was released to modified duty since initial injury. Employer was able to accommodate modified duty position. Employer terminated claimant due to noncompliance RTW [return to work] issues, modified duty.

The hearing officer could conclude that the claimant's termination from work was the cause of the claimant's inability to obtain and retain employment at wages equivalent to the preinjury wage, rather than the compensable injury.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge